

CONFIDENTIAL

ADVISORY OPINION

Interest in City Business

Case No. 13025.A

TO: [Name]
[Address]
Chicago, IL 606__

DATE: [Month and Date], 201_

OPINION SUMMARY

An appointed official, in this case a Special Service Area ["SSA"] Commissioner, who leased a property 100% owned by him to the Service Provider for and under contract with the SSA, violated §2-156-110 of the Governmental Ethics Ordinance ["Ethics Ordinance"] and had a prohibited "financial interested in City business" for the following reasons: (i) the appointed official had an ownership in the lease; (ii) the lease was paid, in part, with funds awarded to the SSA (with a portion of those funds then being paid to the Service Provider) through a City Council vote; (iii) the appointed official was entitled to and did receive more than \$2,500 per year from the lease; and (iv) the lease was not wholly unrelated to his service on the SSA.

I. INTRODUCTION

On [date] Board staff met with you and [Individual A] of SSA¹ #__. You were appointed to the SSA in 200_. You are also a member of _____ Chamber of Commerce, the Service Provider for the SSA, under contract with the SSA to manage many of the services that the SSA provides to the residents and businesses in the SSA's designated area. We have previously recognized that SSAs are City "agencies" for purposes of the Ethics Ordinance, and therefore, you, as a Mayoral appointee to the SSA, are an

¹ Special Service Areas are local tax districts that fund expanded services and programs through a localized property tax levy within contiguous areas. SSAs are created by state statute and a City Ordinance. The City contracts with local non-profits, called Service Providers, to manage SSAs. Service Providers are not City agencies. Mayorally-appointed SSA Commissioners for each SSA district oversee and recommend the annual services, budget and Service Provider Agency to the City.

appointed official for purposes of the Ordinance, as are all SSA commissioners. *See Case Nos. 12007.A.1 and 12007.A.2.*

At that meeting, you explained that you are the 100% owner of a building located at [address] in Chicago. You also said that, sometime in [year], you were approached by [your SSA's Service Provider, hereinafter "SP"] regarding a possible lease of Unit #1 of that building so that [the SP] could use the unit as an office and meeting space both for its daily operations and for SSA #__ meetings. You told Board staff that, at the time, you had been seeking to rent the space for \$2500/month. You and [the SP] eventually agreed to a lease of \$1900/month, with [the SP] paying approximately 2/3 of that amount and the SSA paying the remaining (approximately) 1/3 via the [SP].²

Shortly thereafter, you entered into a written lease agreement in your own name with the SP (SSA #__ is not a party to the lease) on [date]. A copy of that lease was provided to Board staff on [date]. [The lease is not attached to this redacted opinion]. The lease had a term of one (1) year, running from [date] through [date]. Upon expiration of that lease, [the SP] opted to renew it for the period [date] through [date]. [Lease extension not attached to this redacted opinion]. You also provided Board staff with receipts for the period [date] through [date], totaling \$41,800 in lease payments for the property on [address].³ Additionally, you provided copies of five (5) checks from the account of [the SP] made out to you personally, for lease payments from [date] through [date] (these checks were for \$1900 each, thus totaling \$9500). At the May 30 meeting with Board staff, you said that all payments for the property [address] by [the SP] were made to you personally.

Based upon the facts you shared, Board staff advised you at the May 30 meeting that your lease with [the SP] appeared to violate the Ethics Ordinance, specifically § 2-156-110, entitled "Interest in City Business." That provision prohibits appointed City officials, like you, from having a financial interest in City any contract, work or business of the City unless that contract, work or business is "wholly unrelated" to the work of the City board or commission on which they sit. Staff advised you at that time to seek a formal written opinion so that the facts could be accurately assessed, and apprised you that, in the event the Board determines that there indeed has been a violation of the Ordinance that was in effect at the time of the violation: (i) the City would have the right to cancel the lease and maintain a legal action for an accounting and "disgorgement" of lease payments made to you in violation of the Ordinance; (ii) you could be subject to a fine; and (iii) that you would be subject to removal from your SSA appointment; and (iv) if the violation continued after [date], you would be subject to fines of up to \$2,000 per violation. Staff further advised you to resign from the SSA in the event you wished to collect rent checks on or after [date], or terminate the lease as soon as possible if you wished to remain as an SSA Commissioner, at least until the Board could issue a formal opinion in the matter. [Individual A] has confirmed that you remain on as an SSA Commissioner, but the lease was in fact terminated, and the [SP] now leases from a landlord other than you, in a new space.

II. LAW AND ANALYSIS

² The required independent annual audit of SSA #__ for the year ending [date] shows that the SSA expended \$5,000 on "office rent." A similar audit prepared for the year ending [date] again indicates that the SSA expended \$5,000 on "office rent." It is a reasonable inference that SSA #__ has also expended money for the lease for the period [date] through the expiration of the lease on [date], but as the calendar year has not ended, an audit has not yet been prepared.

³ The first payment of \$1,900 on [date] appears to represent a security deposit.

Given that payments under the lease in question were made during both the time period covered by the old version of the Ethics Ordinance that expired on November 1, 2012, *and* the new version that became effective on November 1, 2012, both versions of the law apply to your situation. The principal applicable provision under both versions of the law is § 2-156-110, "Interest in City Business." In both versions of the law, it states, in relevant part:

[N]o elected official or employee shall have a financial interest *in his own name or in the name of any other person* in any contract, work or business of the City, or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance ... [n]o appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.
[Emphasis added]

However, the definition of "financial interest" changed on November 1, 2012. The definition in effect at the time you *entered* into the lease (and its subsequent extension) with [the SP] [ocis](#) found in §2-156-010(l). It was defined, in relevant part, as:

(i) any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year; (ii) any interest with a cost or present value of \$5,000.00 or more ...

This definition of "financial interest" changed on November 1, 2012, so that it is *now* defined as "[A]n interest held by an official or employee that is valued or capable of being valued in monetary terms with a current value of more than \$1,000.00." In other words, for purposes of your case, § 2-156-110 prohibits City employees and *elected* officials from having an ownership interest in any City contract, work or business either in their own name (as here), or in the name of another (for example, ownership in a business that has the contract) that yields or entitles them to more than \$2500 prior to November 1, 2012 and \$1,000 thereafter. *Appointed* City officials, like you, are subject to the same prohibition, unless the contract, work or business is "wholly unrelated" to their City duties, that is, *wholly unrelated* to the work of the City board or commission to which the official is appointed.

The first question we address, then, is whether you had a "financial interest in your own name or in the name of any other person" in the lease with [the SP]. If the answer is yes, then we must, in turn, address two further questions: (i) did you, as the owner and lessor of the property at [address], Chicago, have a financial interest in a *contract, work or business of the City, (paid with funds belonging to or administered by the City, or authorized by ordinance)?*; and, if so, (ii) was that financial interest "wholly unrelated" to your City duties as an SSA Commissioner? If the answer to *these* questions is "yes" and "no," respectively, then you have violated the Ordinance.

1. Did You Have a Financial Interest in City Business?

A. Was This Lease a "Contract, Work or Business of the City?" In delineating the types of City work, contracts or business to which the prohibition attaches, the language of §2-156-110 requires two

elements: (i) it uses the term “*financial interest in*” a “contract, work or business of the City”; (ii) the “consideration [paid by the City] of the contract, work, business” is “paid with funds belonging to or administered by the City, *or is authorized by ordinance.*” (Emphasis added). In other words, as we have recognized, this section does not require that there be privity of contract between the City and the City employee or official, or the company or business entity in which the City employee or official has an ownership interest. See Case Nos. 12007.A-1 and 12007.A-2. That is, the fact that [the SP] (the entity with which you had the lease), is not itself a City agency is *not* dispositive. What *is* dispositive is that, as this Board has recognized in previous cases, SSA budgets are approved annually by City Council Ordinance and SSA funding is administered by the City. Further, a portion of each SSA’s budget covers the cost of its Service Provider’s employee and administrative costs, and, in this instance, at least, office rent. As we have previously recognized, contracts entered into on behalf of the SSA by its service providers constitute “work or business of the City,” to which the interest in City business prohibition attaches, if the entities or persons with whom the service providers contract are owned in whole or in part by City employees or officials, or, as here, the payments are made directly to the City official or employee. *Id.*

As the lease between you and [the SP] was paid in part with funds authorized by City Ordinance, the Board concludes that you (as the owner of [property address]) had an ownership interest in work or business of the City (you were, in effect, a subcontractor to the City, as were the City employees who owned companies that contracted with SSA Service Providers in Case Nos. 12007.A-1 and 12007.A-2). However, your ownership interest constitutes a prohibited financial interest in City business only if: (i) the monetary threshold in §§2-156-010(l) and 2-156-110 of the Ordinance has been met or exceeded (*i.e.*, you received or were entitled to receive more than \$2500 per year from the lease); and (ii) the contract, work or business was not wholly unrelated to the work of your SSA.

B. Does Your Ownership Interest Constitute a “Financial Interest?” You have a 100% ownership interest in [property address]. You received \$41,800 in payments under the lease during the two year period it was in effect. The Board has not attempted to reach a determination as to exactly how much money paid to you under this lease by [the SP] constitutes “funds administered by the City” or “authorized by Ordinance.” However, the SSA #__ audits do indicate that at least \$10,000 in SSA money (thus, “funds administered by the City” or “authorized by Ordinance”) was spent on the lease over the two year lease period. The Board thus concludes that you had a direct financial interest in this lease, which was paid with funds administered by the City and authorized by Ordinance. Therefore, as your 100% ownership interest in the lease with [the SP] produced a figure that represents more than \$2,500 in income per year for the period [the SP] through [date], and more than \$1,000 in income per year for the period [date] through [date], there has been a violation of the Ordinance unless this lease (which is a contract, work or business of the City) business is “wholly unrelated” to your SSA duties.

2. Was Your Financial Interest Wholly Unrelated to Your Service on the SSA?

Like all SSA Commissioners, you oversee the contract with your SSA’s Service Provider and recommend or approve its services, annual budget, and whether its contract should be renewed. Accordingly, it is clear that your lease with [the SP] was clearly not “wholly unrelated” (in fact, it was *very* related) to your work as an SSA #__ Commissioner. As an SSA Commissioner, you had voting authority with respect to the whether[the SP], your lessee, continued as the Service Provider for the SSA, and you have overseen and recommended the very budget from which this lease was, in part, paid.

For the foregoing reasons, then, we conclude that you did have a financial interest in work and business of the City, in violation of §2-156-110 of the Ordinance, by virtue of your ownership interest in the lease between you and [the SP]. This lease, at least in part, was paid using funds administered by the City and authorized by City Council, pursuant to City Ordinance.

III. DETERMINATION

Under the facts presented, the Board has determined that you have violated §2-156-110 of the Ethics Ordinance in that: (i) as an SSA Commissioner, you had an ownership interest (here a 100% ownership interest) in a lease with your SSA's Service Provider; (ii) the lease was paid, in part, with funds awarded to the SSA (with a portion of those funds then being paid to [the SP]) through a City Council vote, with funds administered by the City; (iii) you were entitled to and did receive more than \$2,500 per year from the lease for the period [date] through [date], and more than \$1,000 per year for the period [date] through [date]; and (iv) the lease was not wholly unrelated to your service on the SSA.

The Board's conclusions and determinations are not necessarily dispositive of all issues relevant to this situation, but are based solely on the application of the City's Ethics Ordinance to the information provided. If the information is incorrect or incomplete, please notify the Board immediately, as any change may alter our determinations.

IV. RECOMMENDATION AND SANCTIONS

As noted above, this case is governed by *both* the Ethics Ordinance that was in effect *prior* to November 1, 2012 and the Ethics Ordinance that became effective on November 1, 2012.⁴ Under the *old* version of the Ordinance, the relevant remedies that the City could pursue, and the sanctions it could impose, were:

§2-156-410 Sanctions.

(a) Any official who... violates any provision of this chapter, shall be subject to removal from office; and

§2-156-440 "Other Remedies." Nothing in this chapter shall preclude the city from maintaining an action for accounting for any pecuniary benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

The "old" version of the Ethics Ordinance applies to lease payments you received that are attributable to SSA #__ for the time period [date] through [date]. It is not apparent from the independent audit of the SSA for calendar year 201_ that there was a violation for the period [date] through [date]; rather, it appears that you received less than \$2500 attributable to the SSA through the lease during that time period. However, for the period [date] through [date] ([date] being when the *old* version of the Ordinance

⁴ Ethics Ordinance, Article VIII, §4 effective November 1, 2012 ("Any violation of Chapter 1-156 or Chapter 1-164 of the Municipal Code that occurs or has occurred before the effective date of this ordinance shall be subject to the fines in effect at the time of such violation.")

expired), the independent audit for SSA #__ indicates that you received more than \$2500 in payments under the lease that are attributable to the SSA.

However, for the time period [date] through the expiration of the lease on [date], the *new* version of the Ethics Ordinance was in effect. Under the *new* version, the relevant remedies the City can pursue and sanctions it can impose are:

§2-156-465 Sanctions.

- (a) *Employment Sanction.* Any official who...otherwise violates any provision of this chapter, shall be subject to removal from office.
- (b) *Fines. (7) Violation of Chapter Provisions.* Any person who violates any other provision of this chapter, where no other fine is specifically provided, shall be subject to a fine of not less than \$500.00 and not more than \$2,000.00 for each offense.

§2-156-485. Other Remedies.

Nothing in this chapter shall preclude the city from maintaining an action for an accounting for any pecuniary benefit received by any person in violation of this chapter or other law, or to recover damages for violation of this chapter.

The *new* version of the Ethics Ordinance applies to those payments made under the lease that are attributable to SSA #__ for calendar year 201_, specifically from [date] until the lease expired on [date]. The prohibited financial interest threshold for *this* period, however, was lowered to \$1,000 per year, as explained above. While no independent audit of SSA #__ has yet been prepared for 201_, the history of payments by the SSA under the lease leads to a strong inference that the SSA paid more than \$1,000 in lease payments during that time period and that there is a violation of the Ordinance for this time period as well.

In light of the facts cited in this opinion, the Board recommends, after careful consideration, that: (i) you be removed from SSA #__ for violating the Ordinance; (ii) you are hereby fined \$1167.00 for the violation that occurred subsequent to November 1, 2012 (separate violations of the provision attach for each year so we have calculated the fine by using 7/12 of the maximum penalty given that your violation for 201_ lasted 7 months, and have applied the maximum penalty because the lease continued after May 30 when you met with Board staff); and (iii) the Mayor's Office and the City's Law Department together consider pursuing the City's other option, namely maintaining an action for an accounting and for pecuniary benefits attributable to SSA #__ that you received through the lease with [the SP].

We note, positively, that the Board of Ethics has developed training for all appointed City officials, and that constitutes an important step in the future toward avoiding problems like these.

V. RELIANCE

This opinion may be relied on by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Case No. 13025.A
[Month & day], 2013
Page 7

Sincerely,

Stephen W. Beard
Chair, City of Chicago Board of Ethics

CONFIDENTIAL

[Month & day], 2014

Name

Address

Chicago, IL 606__

Re: Case No. 13025.A – Request for Reconsideration

Dear [Name]:

On [date], you met with Board of Ethics staff to discuss the lease of a property 100% owned by you at [address], Chicago, to the [Service Provider, hereinafter “SP” for your SSA.] During that meeting, you indicated that you were a City of Chicago appointed official, specifically, a Commissioner for Special Service Area [“SSA”] #__.

In light of the facts you shared at the [date] meeting, Board staff advised you that your lease with [the SP] appeared to violate the Governmental Ethics Ordinance [“Ethics Ordinance”]. Board staff further advised that you seek a formal advisory opinion based upon these facts and applicable law. You then submitted extensive documentation to our office in [Month] 201__.

At its meeting on [date], the Board carefully considered all the facts presented in light of the Ethics Ordinance [“Ordinance”]. As fully explained in the advisory opinion issued to you at that time, the Board determined that your lease with [the SP] violated §2-156-110 of the Ordinance in that the lease was a prohibited interest in City business.¹

Board staff subsequently received your timely request for reconsideration, dated [date]. The request asserts that the Board’s finding that you violated the Ordinance was in error. Specifically, your request claims that [the SP] entered into a contract with you for the lease and use of your property at [address]

¹ Section 2-156-110, “Interest in City Business” states, in relevant part:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City, or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance ... [n]o appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official’s City duties and responsibilities. [Emphasis added.]

[Month & day] , 2014

Case Nos. 13025.A

Page 2

for its own.... purposes, and not for any specific benefit to the SSA. In addition, the request appears to state that, during the time in question, [date] through [date], the Service Provider leased space to SSA #__ in a building the Service Provider owns at [a different address than where you leased property to the SP] in Chicago. According to the request, the [property located at a different address] is where SSA #__ “always conducted its operations and housed its staff.” The request further states that the payments made by the [the SP] to you personally, pursuant to the lease for the [property you own and lease], were not made with funds authorized by City Ordinance.

In reviewing your request for reconsideration, Board staff notes that neither the Service Provider’s Cost Allocation Plans, copies of which are attached to your request, nor the required annual independent audits of the SSA previously reviewed by Board staff, indicate the address of the property at which SSA money was expended. Thus, the documents provided do not support or contradict the assertions in your request for reconsideration.

Further, many of the statements made in your request for reconsideration are inconsistent with statements you made to Executive Director Berlin and Deputy Director Eilers during the meeting at the Board’s offices on [date]. During that meeting, you mentioned the property [not owned or leased by you] just once when he referred to it as the “_____ building” and indicated that it was “run down.” You also stated that SSA #__, through its Service Provider had been paying approximately 1/3 of the monthly lease for the property [you own and lease], and that [the SP] was paying the other 2/3. You indicated at that time that you wished to receive guidance as to whether the SSA could now pay 100% (you were advised that this could happen only if you were to resign from the SSA), and also that the lease payments up to that time appeared to violate the Ordinance because they were paid by [the SP] with funds authorized by the City through the SSA Service Provider agreement. Based upon the foregoing facts, the Board, at its [date] meeting, found the lease to be in violation of the Ordinance.

However, after considering the statements (without supporting documentation) that you made in your request for reconsideration, read in the light most favorable to you, the Board voted at its most recent meeting, on [date], that there are insufficient facts upon which it can now be concluded that you violated §2-156-110 of the Ordinance. Therefore, the Board granted your request for reconsideration, while noting that it was troubled that your later statements appear to contradict the facts you made available to Board staff when it prepared its opinion.

Sincerely,

Lisa S. Eilers
Deputy Director